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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,306	04/16/2002	Francis Showering	NOVAPI00US	8228
7590	08/12/2004		EXAMINER	
Himanshu S Amin Amin & Turocy National City Center 24th Floor 1900 East 9th Street Cleveland, OH 44114			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 08/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/009,306	SHOWERING, FRANCIS <i>CR</i>
	Examiner	Art Unit
	James N Smalley	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 May 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 58-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 58-75 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 58-60, 63-68 and 70-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohmi et al. US 5,762,217.

Ohmi '217 discloses a Resin Cap, comprising a cap (1) with a segmented skirt comprising a plurality of lugs, and ring (2) configured for retaining the cap in the applied position. The ring is connected to the skirt by a plurality of frangible bridges (11), which are read to be the "vertical ridges," as they have a measurable dimension in the vertical direction, however slight. In col. 2, lines 52-65, we are taught the ring circumferentially binds the cap to the container rim by preventing the skirt from broadening. Further, in col. 6, lines 59-65, we are taught the skirt is brought into contact with the ring, thus preventing the outward expansion of the skirt, and the frangible bridges are protected from breaking. In col. 4, line 58, we are told the closure could be applied to a carbonated beverage container, inherently indicating the closure can withstand container pressures of 60 psi.

Ohmi '217 does not disclose a plurality of vertical ridges on each segmented lug. Examiner takes Official Notice that is obvious and well-known to vary the number of frangible webs between two elements, for any desired purpose. For example, adding more webs would increase the required fracture force, and may be desirable to prevent unauthorized opening, or to prevent opening by incidental force, such as those incurred during the shipping and distribution of the product on which the cap is applied. Or, another example, would be to simply increase the number of webs, while forming them thinner, so as to maintain the required total fracturing force of the original webs, while distributing the force more evenly about the circumference of the cap.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure taught by Ohmi '217, providing a plurality of webs (11) between the closure cap and the ring, motivated by the benefit of increasing the required fracture force to prevent unauthorized opening, or to prevent opening by incidental force; or to maintain the required total fracturing force of the original webs, while distributing the force more evenly about the circumference of the cap.

3. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al. US 5,762,217 as applied above to claim 58.

Ohmi '217 does not teach the diameter of the container, although the closure could be molded to fit any sized container. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

5. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al. US 5,762,217 in view of Bean US 4,216,872.

Ohmi '217 does not disclose the abutment surface inclined at an angle less than that of the ramp surface.

Bean '872 shows such an abutment surface angle, in fig. 5. One having ordinary skill would recognize that the flatter the abutment surface is, relative to horizontal, the greater the upward force necessary for removal of the closure will be.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the abutment surface of Ohmi '217, inclining the abutment surface at an angle less than that of the ramp surface, motivated by the benefit of a closure resistant to upward forcing, possibly from carbonation, thus maintaining greater contact between the closure and the container.

Response to Arguments

6. Applicant's arguments with respect to claims 58-77 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

*Lee Young
4/9/04*
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